

## **REMARKS**

### **Amendments to Claims**

Claims 40-48 have been withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, as described in the Office Action. Please cancel claims 12, 15-29 and 31-39. Please amend claims 1, 5, 6, 10, 11 and 30, as shown above. Please add new claims 49-66, as shown above.

### **Claim Objections**

The Examiner has objected to claim 1, stating that the use of the word "determining" after comprising is unclear and not proper English. The Examiner suggested adding "the steps of" after the word "comprising" in the preamble of claim 1. Applicant appreciates the suggestion and has made the change suggested by the Examiner. Applicant has made a corresponding change to claim 30.

The Examiner has also objected to claims 1-39 because the acronym NIC is not defined or spelled out in the claims. Applicant has spelled out that a NIC is a "network interface card" in each of the independent claims that are pending after this amendment. Applicant submits that the Examiner's objections to the claims have been overcome.

### **Claim Rejections**

#### **Rejections Under 35 U.S.C. 112**

The Examiner has rejected claims 1-14, 24-29 and 31-39 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Of this group of rejected claims, the only claims remaining after this amendment are claims 1-11, 13 and 14.

With respect to claims 1-14, the Examiner wrote:

Claim 1 recites "determining NIC management information related to possible NICs over which the data may be transferred" the term "may be" renders the claim indefinite because the preamble states the purpose of the method is to respond to a request to transfer data, however by using "may be" it is unclear whether the data will be transferred or not.

The Examiner also wrote that "Claims 2-14 inherit the indefinite limitation from claim 1 and thus are also rejected."

Applicant has amended claim 1 to replace "determining NIC management information related to NICs over which the data may be transferred" with "determining NIC management information related to one or more of the plurality of NICs." Applicant respectfully submits that this indefiniteness rejection of claims 1-11, 13 and 14 has been overcome.

### **Rejections Under 35 U.S.C. 102**

The Examiner has rejected claim 30 under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 7,111,303, with inventors of Macchiano et al. (hereinafter "Macchiano").

Applicant has amended claim 30 to better distinguish over Macchiano and the other prior art cited by the Examiner. Applicant respectfully submits that the prior art of record does not disclose nor suggest (a) "determining that the first VM has a higher priority than the second VM" or (b) "if the second VM is involved in the requested data transfer, in response to determining that the second NIC is not available, discarding the data." Applicant respectfully submits that claim 30 is patentable over the prior art of record because of these limitations, either alone or combined with each other, especially when combined with all the other limitations of claim 30. Applicant respectfully submits that claim 30, as amended, is patentable over the prior art of record.

### **Rejections Under 35 U.S.C. 103**

The Examiner has rejected claims 1-29 and 31-39 under 35 U.S.C. 103(a) as being unpatentable over various combinations of cited references. Of this group of rejected claims, only claims 1-11, 13 and 14 are pending after this amendment.

The Examiner has rejected claims 1-8 and 10 under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,208,616, with inventors of Mahalingam et al. (hereinafter "Mahalingam"), in view of U.S. Patent No. 7,136,800, with an inventor of Vega (hereinafter "Vega"). The Examiner has rejected claim 9 under 35 U.S.C. 103(a) as being unpatentable over Mahalingam, in view of U.S. Publication No. 2004/0267866, with inventors of Carollo et al. (hereinafter "Carollo"). The Examiner has rejected claims 11, 13 and 14 under 35 U.S.C. 103(a) as being unpatentable over Mahalingam, in view of Vega and further in view of U.S. Patent No. 7,203,944, with inventors of Rietschote et al. (hereinafter "Rietschote").

With respect to claim 1, Applicant respectfully submits that neither Mahalingam nor Vega, nor any other prior art cited by the Examiner, discloses nor suggests "deciding whether to transfer the data" in connection with a request to transfer data from a virtual computer system to a computer network. Applicant could not identify any citation by the Examiner that purportedly discloses this limitation. Applicant reviewed the entire Mahalingam reference and could not find and suggestion of "deciding whether to transfer" data to a computer network. In stark contrast, each time that the Mahalingam reference referred to data that was to be transferred to a computer network, there was always a statement about routing the data over one of the NICs, and never any mention of any possibility that the data might not be transferred to the computer network. For example, Figure 10 of Mahalingam shows that a "MAC" packet is received from the protocol stack (state 1210), an outbound NIC is chosen (state 1220) and the MAC packet is sent to the chosen NIC (state 1230), with no indication of any decision whether or not to transfer the packet. Similarly, in the description of Figure 10 (the paragraph beginning at column 15, line 25), Mahalingam states that "the system receives a MAC-level packet from a protocol stack," "the system . . . selects a NIC to send out packets from the plurality of NICs" and "the system . . . routes the MAC-level packet to the NIC selected at state 1220." There is no suggestion of any decision of

whether to transfer the packet, there is just a selection of a NIC and a routing of the packet to the NIC. There are many other such examples throughout the Mahalingam reference. In particular, at column 11, lines 18-20, Mahalingam indicates that “[a]ll packets will be sent and received through this adapter when the load sharing feature is disabled.” Accordingly, Applicant respectfully submits that claim 1 is patentable over the prior art of record.

In addition, to further distinguish over the prior art cited by the Examiner, Applicant has further amended claim 1 to add a limitation of “if a decision is made not to transfer the data, discarding the data.” Applicant respectfully submits that none of the references cited by the Examiner disclose nor suggest discarding data from a request to transfer data to a computer network. Therefore, Applicant submits that claim 1, as amended, is patentable over the prior art cited by the Examiner.

Claims 2-11, 13 and 14 depend from claim 1, and so are patentable for the same reasons as claim 1. In addition, Applicant submits that some of these dependent claims are patentable for other reasons as well. For example, claim 8 is limited to “a first VM's data transfer requests are substantially always routed over a first NIC as long as the first NIC is available, and a second VM's data transfer requests are substantially always routed over a second NIC as long as the second NIC is available.” The Examiner wrote that this limitation is “disclosed by Mahalingam as a system having a primary and secondary NIC where traffic is directed to the primary NIC until it fails and thereafter traffic is directed to the remaining NIC.” Applicant does not understand how this disclosure of Mahalingam relates to the limitation of claim 8. Applicant respectfully submits that the teaching of Mahalingam is substantially different from this limitation of claim 8. Applicant respectfully submits that this limitation of claim 8 is neither disclosed nor suggested by the prior art of record.

### **New Claims**

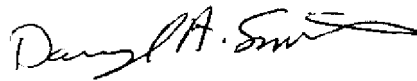
The new claims added with this amendment are substantively comparable to corresponding original claims, as amended, that are pending after this amendment. Applicant submits that the new claims are patentable over the prior art of record for the same reasons as described above.

## Conclusion

The various embodiments of the applicant's invention as defined in the various independent claims recite features that are not found at all in any of the cited references, whether the references are viewed independently or in combination. Accordingly, applicant submits that the independent claims are allowable over the cited prior art. The various dependent claims, of course, simply add additional limitations and should therefore be allowable along with their respective independent base claims. Applicant requests reconsideration of this application.

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Respectfully submitted,

A handwritten signature in black ink, appearing to read "Darryl A. Smith", with a stylized flourish at the end.

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